

1 (Whereupon Sprint Cross Chapman 763  
2 Exhibit 1 was marked for  
3 identification.)  
4 MR. SCHIFMAN: Your Honor, for the record, I've  
5 given the witness an exhibit marked for  
6 identification Sprint Cross Exhibit Chapman 1.  
7 EXAMINER WOODS: Close enough.  
8 MR. SCHIFMAN: Close enough.  
9 MS. HIGHTMAN: All the right words are there.  
10 MR. SCHIFMAN: It may be in the wrong order.  
11 EXAMINER WOODS: We'll reflect it in the record  
12 the way the Court Reporter marks it.  
13 MR. SCHIFMAN: Thank you, Your Honor.  
14 Q. Ms. Chapman, have you ever seen this  
15 exhibit before?  
16 A. I may have. I saw something similar to  
17 this. I'm not sure if it's the exact same one, but I  
18 think I have.  
19 Q. Do you recognize this as a news release  
20 issued by Covad and SBC describing a settlement that  
21 those two companies reached?  
22 A. Yes.

1 Q. Okay. 764  
2 And on the second page of that news  
3 release it talks about some of the terms of the  
4 settlement. Is that right?  
5 A. Let me see.  
6 EXAMINER WOODS: First full paragraph.  
7 (Pause in the proceedings.)  
8 A. Yes.  
9 Q. Okay. And one of the things that it  
10 talks about is on the -- in the first full paragraph  
11 of the second page, the last sentence states, "In  
12 addition, the parties agreed upon a 13-state,  
13 line-sharing price consisting of a \$10 nonrecurring  
14 charge and a \$5.75 monthly recurring charge for all  
15 physical elements of the line-sharing UNE, including  
16 installation." Do you see that?  
17 A. Yes, I do.  
18 Q. Okay. Are you familiar with the  
19 nonrecurring charges that Ameritech is offering here  
20 in this state as part of its line-sharing offering?  
21 A. I'd have to review them to be familiar  
22 with the exact price, but I'm familiar with what

1 we're -- what we have nonrecurring charges on, yes. 765  
2 Q. Okay. I don't know if your counsel wants  
3 to hand you the tariff pages on that. I was just  
4 going to review them with the witness.  
5 MR. BINNIG: I don't have any problem with you  
6 reviewing the tariff pages, but I mean to save time,  
7 I know Ms. Chapman is in a hurry. We'll stipulate  
8 they say what they say.  
9 MR. SCHIFMAN: Okay. They say what they say.  
10 Okay.  
11 Q. Nonrecurring charges for the offering  
12 include a service ordering charge of \$13.17, a line  
13 connection charge of loop per termination of \$25.08,  
14 then a cross-connection service per loop  
15 cross-connected, and it gives a charge where you have  
16 to see another part of the tariff. Do these charges  
17 sound familiar to you?  
18 A. Yes. Again, I haven't seen Covad's  
19 actual agreement. I do not believe that the service  
20 order charges would be part of that. Those are not  
21 included in the DSL HFPL appendix. That's part of  
22 the underlying agreement, so. I believe, but, again,

1 I haven't seen this so it's kind of difficult to know 766  
2 for sure, but I believe that the charges that this is  
3 talking about are going to be the cross-connect  
4 charges, which are the nonrecurring charges for a  
5 HFPL, but, again, without seeing the agreement, I  
6 really have no way of, you know, doing a comparison.  
7 Q. Right.  
8 MR. BINNIG: And on that topic, you may -- I  
9 mean I think this can all be done in brief, but the  
10 testimony of Mr. O'Brien had some revised tariff  
11 pages attached to it. You may want to make sure that  
12 you're looking at those as well.  
13 MR. SCHIFMAN: Yeah, I did see, and I believe  
14 these are the same tariffs.  
15 MR. BINNIG: Okay.  
16 MR. SCHIFMAN:  
17 Q. So based on the press release that your  
18 company issued, the nonrecurring charges for Covad  
19 are \$10 per month for line sharing -- for all  
20 physical elements of the line-sharing UNE, including  
21 installation. Is that right?  
22 A. Let's see. Well, you said \$10.

1 Q. Oh, I'm sorry. \$10 nonrecurring charge, 767  
2 not monthly.  
3 A. Yes, I understand that it says that it's  
4 a \$10 nonrecurring charge, which I believe, according  
5 to the way we price these, would be for the  
6 cross-connect, the physical work that we do on the  
7 cross-connects, and then a \$5.75 monthly charge,  
8 which I believe would be for the HFPL UNE.  
9 Q. Okay. And as part of your duties as a  
10 wholesale marketing person, does your company plan to  
11 offer to CLECs line sharing at the rates that are  
12 mentioned in this Cross Exhibit 1?  
13 A. Yes. If any CLEC would be interested in  
14 MFNing into this agreement once it's --  
15 EXAMINER WOODS: Interested in what?  
16 A. MFNing, most favored nation. Basically  
17 it's accepting the agreement as is.  
18 MR. BINNIG: It's a technical legal term. It's  
19 252(i), Your Honor.  
20 MR. BOWEN: Objection. Lawyer testimony by a  
21 lawyer.  
22 A. This is a 13-state agreement with

1 averaged rates, so if a CLEC was interested, they 768  
2 would need to take the 13-state agreement.  
3 Obviously, if they're not operating in all 13 states,  
4 it would only apply in the states they operate in,  
5 but since it's averaged rates, it's not available on  
6 a state-by-state basis, but, yes, anyone else could  
7 have the same exact terms and conditions that are  
8 made available to Covad, obviously.  
9 Q. At this time do you plan to amend your  
10 tariff to reflect the charges that are set forth in  
11 the Covad agreement?  
12 A. No. We would not amend a state-specific  
13 rate for a 13-state averaged rate. No, we would not.  
14 The 13-state average is just that.  
15 Q. So if Sprint is operating in all 13  
16 states that SBC has an ILEC in, then we would have to  
17 -- if we want to take advantage of the \$10  
18 nonrecurring charge and the \$5.75 monthly recurring  
19 charge, we would have to sign -- we would have to  
20 252(i), sign a contract via the 252(i) provision for  
21 all 13 states. Is that right?  
22 A. Right, because this is what this

1 agreement is. It's a 13-state agreement, so you 769  
2 would take that same agreement, yes.  
3 Q. And if Sprint had a different business  
4 plan than Covad but still wanted to obtain the rates  
5 that Covad has in its agreement with SBC and did not  
6 want to sign an agreement whereby we on a 13-state  
7 basis obtain all the terms and conditions that Covad  
8 has, we would not be able to get those charges that  
9 are set forth in the Covad agreement?  
10 A. Well, they would not be able to take the  
11 Covad agreement. Now whether or not they would be  
12 able to negotiate something similar I can't say. It  
13 would depend on what terms were agreed to in the  
14 Sprint agreement.  
15 MR. SCHIFMAN: Okay. No further questions,  
16 Your Honor.  
17 EXAMINER WOODS: Okay. Let's take ten minutes.  
18 MR. SCHIFMAN: Oh, let me move into the record  
19 Sprint Chapman Cross Exhibit 1, please.  
20 MS. HIGHTMAN: Seven exhibit Chapman cross.  
21 EXAMINER WOODS: Without objection.  
22 MR. BINNIG: No objection, Your Honor.

1 (Whereupon Sprint Cross Chapman 770  
2 Exhibit 1 was received into  
3 evidence.)  
4 (Whereupon a ten-minute recess was  
5 taken.)  
6 EXAMINER WOODS: Back on the record.  
7 Who is next? Mr. Bowen.  
8 MR. BOWEN: Thank you, Your Honor.  
9 CROSS EXAMINATION  
10 BY MR. BOWEN:  
11 Q. Good morning, Ms. Chapman. Nice to see  
12 you again.  
13 A. Good morning.  
14 Q. Can I ask you first, do you have an  
15 engineering undergraduate degree?  
16 A. No.  
17 Q. Okay. And you say on page 1 on lines 15  
18 and 16 that part of your duties are to guide  
19 compliance with the FTA and federal and state laws  
20 concerning the continued implementation of the FTA.  
21 Do you see that?  
22 A. Yes.

771

1 Q. What does that mean?

2 A. Basically it means that part of what I do

3 is look at the orders that come out both out of the

4 FCC and out of the various state commissions. I'm

5 responsible for advanced services offering so I look

6 at it in that context and try to make sure that what

7 we are offering is compliant with that and that we

8 follow all the laws of the land basically.

9 Q. Okay. Are you a lawyer?

10 A. No, I'm not. I review those from an

11 implementation standpoint, you know, in a lot of --

12 well, obviously you have to be able to implement the

13 law, so, no, I don't try to interpret the legal

14 aspects of it but rather the physical implementation,

15 the product aspects of what is written.

16 Q. Okay. So is it fair to say that your

17 testimony as you address the Federal

18 Telecommunications Act and state laws and FCC orders

19 and so forth, that testimony is the testimony of a

20 nonlawyer? Is that fair?

21 A. Yes. Again, it's as a person who is

22 actually working in the implementation side of those

772

1 laws, so, but not from a legal perspective.

2 Q. Okay. Now do you work in wholesale

3 marketing right now? Is that right?

4 A. Yes.

5 Q. And I want to key off a couple questions

6 that Sprint's counsel asked you. I wasn't quite

7 clear on whether or not you actually had asked any

8 CLECs what they wanted. Isn't it true that you

9 didn't ask Rhythms what they wanted with respect to

10 the use of the Pronto network before you rolled out

11 your wholesale Broadband Service offering?

12 A. Again, I'm not positive of when we began

13 talking with the CLECs and doing the collaboratives,

14 getting CLEC input. That may be the case. I don't

15 know the timing. I know we were developing the

16 product prior to the collaborations, and then we've

17 collaborated since.

18 Q. Okay. Is your undergraduate degree in

19 marketing?

20 A. No.

21 Q. Okay. Well, wouldn't it be fair to -- or

22 would you agree with me that marketing groups in

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1 other companies try to find out what their customers

2 want before they offer products to them?

3 A. As a general rule, yes. I believe that

4 is true. I believe the CLECs are pretty vocal about

5 a lot of their wants, and so, you know, we are aware

6 about some of the wants and desires of the CLECs, but

7 yes.

8 Q. Okay. Well, for example, Proctor &

9 Gamble probably wouldn't offer a new toothpaste

10 without trying to find out what the market wanted,

11 would it?

12 A. I really don't know what Proctor & Gamble

13 would do, but.

14 Q. Have you ever worked in marketing for any

15 other company besides SBC?

16 A. No.

17 Q. Okay. Do you specifically recall -- I

18 asked the question about Rhythms. Do you

19 specifically recall asking any CLEC besides AADS or

20 SBC ASI before you rolled out the wholesale broadband

21 offering what they wanted exactly?

22 MR. BINNIG: I'm going to object to the

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1 question. I think it assumes facts not in evidence.

2 EXAMINER WOODS: I didn't hear the question.

3 I'm sorry.

4 MR. BOWEN: I asked the witness whether she

5 recalls asking any CLEC specifically, besides SBC ASI

6 and Ameritech AADS, what they wanted before they

7 rolled out the Broadband Service offering.

8 EXAMINER WOODS: Overruled. You can answer.

9 A. I don't recall asking any CLEC, including

10 ASI and AADS, specifically what they wanted before

11 the product was rolled out.

12 Q. Okay. Are you clear that what Rhythms

13 wants is UNEs under the Pronto architecture? Do you

14 have any doubt in your mind about that?

15 A. I understand that is part of what Rhythms

16 has requested, yes.

17 Q. And you're clear on that. Right?

18 A. I think so.

19 Q. How long have you been clear on that do

20 you think?

21 A. Probably since Rhythms first said that.

22 I don't know the date.

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1 Q. Okay. And when do you recall that being?

2 Was it during the Texas proceeding, for example?

3 A. No, I don't believe it was actually in a

4 proceeding. I believe it was at one of the workshops

5 that we had before the Texas proceeding, but, again,

6 I'm not certain the first time I've heard it.

7 Q. Do you recall you and I sitting in front

8 of the Texas Commission in a ADSL workshop and me

9 saying that Rhythms wanted Project Pronto as UNEs?

10 A. I do remember that a couple of months ago

11 I believe it was.

12 Q. Okay. Do you ever feel as though you're

13 working in the Department of Competition Prevention?

14 A. No.

15 MR. BINNIG: I'll object to the question.

16 Q. Okay.

17 A. I feel exactly the opposite actually.

18 Q. When do you plan to take any account and

19 take any action in response to Rhythms' request to

20 get access to the Pronto architecture as UNEs?

21 A. I really don't know how to answer that

22 question. I believe we've listened to your account.

776

1 I don't know that we agree that it's appropriate, and

2 it's technically infeasible to unbundle the elements

3 that are required to provide the service, so I don't

4 know how to answer that.

5 Q. Okay. Is it fair to say you have no

6 current plans to respond affirmatively to our request

7 to get access to Pronto as UNEs?

8 A. I would say that, yes, we do not intend

9 to offer as UNEs this voluntary service.

10 Q. Okay. Do you think -- again, I want to

11 ask you about -- because you do speak about this and

12 it's your job to interpret and apply the

13 Telecommunications Act of '96, so I want to ask you

14 questions, again, as a lay witness, not as a lawyer

15 for this whole series here. Do you think that

16 Ameritech has an obligation to unbundle its network

17 in general?

18 A. In general, I believe we are required to

19 unbundle elements of our network that are technically

20 feasible to unbundle, particularly our embedded

21 network that was built up over years and years and

22 years, you know, prior to the advent of competition,

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1 so.

2 Q. Okay. And what provision of the Telecom

3 Act do you think creates that obligation? If you

4 recall.

5 A. I believe that would be the 251. I'd

6 have to look at it. I've read through it, and I'm

7 not real good with numbers.

8 Q. Okay.

9 A. Specifically which letter under that. I

10 mean there's all these subparagraphs and parentheses

11 and all that.

12 Q. Okay. Do you think that Ameritech has an

13 obligation to unbundle its loops into subloops?

14 A. Yes, where technically feasible, yes.

15 Q. And what requirements do you think

16 mandate that outcome? Is there a requirement in the

17 Act do you think that mandates that?

18 A. I believe it's a requirement of the Act

19 and also as the FCC has established the rules under

20 the Act in order to implement it, so it's part of the

21 -- the definition of the loop includes the subloop,

22 so yes.

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1 Q. And do you have an opinion as to which

2 FCC order or orders mandate subloop unbundling?

3 A. Well, actually I don't believe that the

4 FCC order, the original -- oh, the FCC order. I'm

5 sorry. I believe that's in the UNE Remand where it

6 specifically defines the subloop as being part of the

7 loop.

8 Q. Okay. Now, do you think that -- I'm

9 trying to understand. You mentioned the embedded

10 network. I'm trying to understand what you think the

11 scope of your ongoing unbundling obligation is, so

12 the question is do you think that Ameritech has an

13 obligation to unbundle only the architecture and

14 technology deployed as of the date of the Act

15 passage, which was February of '96?

16 A. I'm sorry. Could you restate that?

17 Q. Sure. Do you think that Ameritech has an

18 obligation to unbundle only the architecture and

19 technology deployed by in this case Ameritech

20 Illinois as of the date of the Telecommunications

21 Act's passage which is February of 1996?

22 A. I would say in general, yes, although,

779

1 obviously, there's going to be just standard  
 2 additions to those same unbundling requirements such  
 3 as loops that are going to be added that weren't  
 4 there originally but are still part of that  
 5 obligation, so.

6 Q. Do I understand your answer to mean then  
 7 that any new technology deployed or any new  
 8 architecture deployed by Ameritech post  
 9 Telecommunications Act is not required to be  
 10 unbundled in your view?

11 A. No, not exactly. I think there would be  
 12 differences depending on exactly what the nature of  
 13 what was deployed and whether or not -- for instance,  
 14 if we deploy a new switch, switching is an unbundled  
 15 requirement, so that would be a replacement of  
 16 existing, and so obviously we would need to unbundle  
 17 that. Again, it would, you know, vary depending on  
 18 what exactly was deployed, so we'd have to look at  
 19 that.

20 Q. Well, in general, do you think that SBC  
 21 and, in particular, Ameritech Illinois has an  
 22 obligation to unbundle and offer as UNEs its Project

780

1 Pronto architecture?

2 A. No, I do not.

3 Q. Let's focus down on page 35 around lines  
 4 27 to 29.

5 A. I'm sorry; where?

6 Q. 35. Before I ask the question I was  
 7 going to ask, I need one more follow-up. Your last  
 8 answer was you don't think you have an obligation to  
 9 unbundle Pronto. Am I correct that you and the  
 10 product marketing group has taken actions that are  
 11 consistent with that testimony in addressing Project  
 12 Pronto?

13 A. I guess I don't understand what you mean  
 14 by taken actions.

15 Q. What I mean is you've only offered a  
 16 wholesale Broadband Service and you've declined to  
 17 offer it as UNEs. Is that right?

18 A. That is correct. It is infeasible to  
 19 unbundle as separate elements, and we're offering it  
 20 as a service instead.

21 Q. Okay. Now focus with me, please, on page  
 22 35 towards the bottom there where you say, and I'm

781

1 quoting you here, "none of the existing unbundling  
 2 options available to CLECs today are altered in any  
 3 way." Do you see that?

4 A. Yes, I do.

5 Q. All right. I want to do a hypothetical  
 6 with you, Ms. Chapman. I want you to assume that  
 7 there is a distribution area. Have you heard that  
 8 term any, distribution area?

9 A. Yes, I have.

10 Q. Okay. There's a distribution area in  
 11 which a customer resides right now that's served by  
 12 home-run copper, meaning copper from the premises all  
 13 the way to the central office.

14 A. Okay.

15 Q. And I want you also to assume that that  
 16 customer wants to use Ameritech Illinois for voice  
 17 and Rhythms for data service.

18 A. Okay.

19 Q. And it wants to do it on the same line.

20 A. Okay.

21 Q. And we can do that, right? We can line  
 22 share on an all copper loop to that customer, right?

782

1 A. Yes, we can.

2 Q. Okay. So assume that that happens, that  
 3 we get the data side of the customer and you get the  
 4 voice side, and that service is up and running and  
 5 working fine.

6 A. Uh-huh.

7 Q. All right? Then at some point over the  
 8 next two years, as Pronto rolls out, that particular  
 9 distribution area becomes served by a Project Pronto  
 10 RT as well. Can you assume that with me?

11 A. Sure.

12 Q. Okay. Now, under your proposal -- I want  
 13 to understand what happens, if anything, to the all  
 14 copper line-shared service that's up and running  
 15 right now between Ameritech Illinois and Rhythms.

16 A. Nothing.

17 Q. Nothing. Okay. So we get to leave that  
 18 up after the Pronto roll-out in my hypothetical.  
 19 Right?

20 A. Yes.

21 Q. Okay. All right. Now let's try a  
 22 different hypothetical. Let's assume the same

783

1 distribution area, same customer, but they're not a  
2 Rhythms customer right now.

3 A. Okay.

4 Q. Okay? And assume with me that that  
5 distribution area is the lucky beneficiary of an  
6 early portion of the Project Pronto roll-out and  
7 becomes served by a Project Pronto RT.

8 A. Okay.

9 Q. Can you assume that with me?

10 A. Yes.

11 Q. Okay. Now the customer wants line  
12 sharing.

13 A. Uh-huh.

14 Q. And wants to use Rhythms for data and  
15 Ameritech Illinois for voice services. I want to  
16 understand from you -- you're clear on the  
17 hypothetical so far, right?

18 A. I think so.

19 Q. Pronto is rolled. The customer wants to  
20 get line-shared service, data from Rhythms, voice  
21 from Ameritech.

22 A. Uh-huh.

784

1 Q. Now what happens then? Will that service  
2 be provisioned on Project Pronto or on the existing  
3 home-run copper facility?

4 A. It would depend on what Rhythms  
5 requested. If they requested just standard line  
6 sharing, then it would be provisioned on the home-run  
7 copper, as you call it. If they requested the  
8 Broadband Service offering, then it would be  
9 provisioned over that, that offering, so it would  
10 just depend on the request.

11 Q. What I'm trying to understand is who gets  
12 the choice of which facilities will be used to serve  
13 that line-shared application? Is it you or is it  
14 Rhythms?

15 A. It's the data provider, Rhythms in this  
16 case.

17 Q. All right.

18 Okay. I don't believe you were here for  
19 my cross of Mr. Lube. Is that right?

20 A. Just the end of it I believe, or was I?

21 Q. The previous days's cross? Were you here  
22 for his follow on morning? Is that right?

785

1 A. I was here in the morning, yesterday  
2 morning. I wasn't here the day before.

3 Q. Okay. Well, he referred to -- I hope  
4 somebody told you this. He referred a couple of  
5 questions to you.

6 A. I've been warned that I might get a  
7 couple.

8 Q. Okay. All right. I want to talk about  
9 -- and you do have your offering as part of your  
10 attachment. Right? The contract language and the  
11 description is attached to your testimony. Right?

12 A. The Interim Agreement, yes.

13 Q. Right. And the description of the  
14 services thereto. Right?

15 A. Is there an actual description? Other  
16 than outside of what's in the contract, I'm not sure  
17 there is, but I think it's in the contract itself.

18 Q. Close enough. Now you're in marketing so  
19 I know you know the difference between a service and  
20 a UNE, right?

21 A. Yes, I believe so.

22 Q. What do you think the difference is

786

1 between a service offered by Ameritech and a UNE  
2 offered by Ameritech?

3 A. A UNE would be a portion of our network  
4 that we just provide, for instance, a loop where we  
5 would just simply provide the facilities. We don't  
6 do anything with it. We don't provide the -- we  
7 don't make it work basically. We just give you the  
8 pieces of the network, whereas a service would be  
9 where we are actually providing a complete end-to-end  
10 something, and in this case we're providing complete  
11 end-to-end data products that we're handing off the  
12 data to the CLEC.

13 Q. Okay. Now is it true that -- and I want  
14 you to keep in mind your knowledge of the FCC's  
15 orders. Is it true that if we get UNEs, that we're  
16 allowed to use those UNEs to the fullest extent of  
17 their permissible use, meaning as long as we don't  
18 cross any technical or legal boundaries, we can make  
19 the best possible use of those individual UNEs?

20 A. Yes, basically, as long as you're not  
21 harming somebody else, yes.

22 Q. Okay. And that includes the full

787

1 functionality of those UNEs. Is that right?

2 A. Yes, it does.

3 Q. Okay. Now, the wholesale Broadband

4 Service that you're suggesting that we buy in lieu of

5 UNEs on the Project Pronto architecture, I see this

6 contractual document attached to your testimony, and

7 that's an interim document. Is that right?

8 A. Yes, it is.

9 Q. And, in fact, it's going to be a

10 contract. Right?

11 A. Yes.

12 Q. Okay. Do you plan to offer the wholesale

13 Broadband Service via tariff as well?

14 A. No, we do not at this time.

15 Q. Why is it interim?

16 A. Again, the interim is to allow the CLECs

17 to go ahead and sign this while they're in the

18 negotiating process, so what they can do is they can

19 go ahead and enter the market using this interim

20 agreement, and then if they're negotiating the final

21 terms and conditions, it doesn't hold them back from

22 going ahead and getting into the market while they're

788

1 in the negotiation process, so that's the purpose of

2 an interim agreement.

3 Q. Okay. So what you're suggesting is that

4 Rhythms negotiate a permanent agreement for a service

5 instead of a UNE. Right?

6 A. Yes.

7 Q. Okay. And you discussed this briefly

8 with Sprint's counsel, but I want to understand what

9 this means exactly. He pointed you to the first page

10 of the Accessible Letter, Schedule CAC-4.

11 A. Uh-huh.

12 Q. And pointed your attention to the

13 language about SBC ILECs, including Ameritech

14 Illinois, reserving the right to change, modify

15 and/or withdraw the Broadband Service in their sole

16 discretion, in whole or in part, to have and to hold

17 -- no -- as a result of regulatory developments,

18 including but not limited to action or inaction on

19 the matters pending before the FCC. Right?

20 A. Yes.

21 Q. All right. And I think you said that

22 once this contract gets signed, you can't withdraw

789

1 it. Did I hear that right or not?

2 A. What I said was once a contract is

3 signed, that any withdrawal of the offering would be

4 subject to the terms of the contract, so we wouldn't

5 be able to just unilaterally take something away that

6 we have a contractual obligation to do.

7 Q. Okay. Can you point me to the clause in

8 this contract language that you want us to sign that

9 captures that notion?

10 A. Again, --

11 Q. That is, I want to see a contract clause

12 that says that once this is signed, that you cannot

13 withdraw, modify, or change the wholesale Broadband

14 Service unilaterally as it applies to that particular

15 CLEC.

16 A. I don't know that it would be in the

17 contract that way. What would have to be in the

18 contract in order for us to withdraw it would be

19 something saying that -- again, I'm not a lawyer, but

20 I would believe it would be something that would say

21 to the effect that you can withdraw it under these

22 terms and conditions. Otherwise, I mean we're bound

790

1 by whatever is in the contract. If the contract says

2 we're going to offer something, then we have to offer

3 it unless it gives us an out. So if the contract

4 doesn't give us an out, then we're bound.

5 Q. Well, you're telling the world of CLECs

6 at least that this document, this offering, you have

7 the unilateral right to modify or withdraw it.

8 A. Right, which is why we say we encourage

9 you to go ahead and negotiate so you would have a

10 contract.

11 Q. So you can't point me to any section in

12 the actual contract that says you can't withdraw it.

13 A. As I said, the withdrawal would be

14 governed by the contract, so.

15 Q. Okay.

16 Now keep in mind the section of the Act

17 that you recall applying to UNEs. You said around

18 251. That's close enough for now.

19 A. Yeah. Which letter I don't remember,

20 but.

21 Q. Okay. Does that same section of the Act

22 control how you have to offer Rhythms a service like

791

1 the wholesale Broadband Service?

2 A. I'm not sure where the nondiscriminatory

3 section is. I believe it may also be in that. I'd

4 have to reread it to remember exactly where that is,

5 but there are nondiscrimination requirements, and I

6 believe that would probably also be in the 272 with,

7 you know, separate affiliates because we're offering

8 it on a nondiscriminatory basis to everybody, so.

9 I'm sorry. I would just have to look at it. I

10 couldn't tell you.

11 Q. Okay. Well, isn't that the section of

12 the Act that applies to UNEs?

13 A. Yes.

14 Q. Don't different sections of the Act apply

15 to services?

16 A. Again, I would have to look. I just

17 don't want to state something.

18 Q. Okay. Well, do you know if there's a

19 section of the Act that applies to resale of ILEC

20 services separate from 251? Or the section of that

21 Act that you're thinking of?

22 A. I've read the stuff that applies to

792

1 resale. I don't remember what section -- I don't

2 deal with resale, so.

3 Q. Okay. Do you think that Rhythms has the

4 power under the Act to force Ameritech Illinois to

5 offer it the service features and functions that it

6 wants under your Broadband Service offering?

7 A. No, I don't believe that.

8 Q. Okay.

9 A. Due to the fact that it's not, again, an

10 unbundled network element. However, as part of our

11 commitments we have agreed to work collaboratively

12 with the CLECs to make those types of functions

13 available, but -- so we've --

14 Q. Well, working collaboratively means to me

15 that both sides agree on something. Isn't that fair?

16 A. Yes, it does, but it also means that, in

17 this case, in order to provide some of that, there's

18 going to be cost issues and whether or not we can

19 come up with something that's agreeable because

20 basically if you're using a larger amount of

21 bandwidth, and I'm sure Mr. Lube got into this so

22 don't -- I can't get really into the details, but it

793

1 could raise the costs considerably, and whether or

2 not the CLECs would be willing to pay those kind of

3 costs I don't know, but, yes, I mean that is

4 something that we are working collaboratively with

5 the CLECs right now is looking at ways to provide

6 different options that the CLECs desire for different

7 types of service for, for instance, the constant bit

8 rate and all those things that Rhythms and others are

9 interested in.

10 Q. Well, I didn't say anything about more

11 bandwidth or constant bit rate in my question. I'm

12 asking a general question.

13 A. And I'm just saying that collaboration

14 requires you to look at all the factors. I mean you

15 just can't say I want this, he wants -- you know, you

16 have to look at, yes, I want this, but am I willing

17 to pay for it. I want this, but am I willing to do

18 what I have to do to get it. So that's part of the

19 collaborative process, and that's part of what we're

20 going through.

21 Q. All right. If Rhythms attempts to

22 collaborate with SBC or Ameritech Illinois, as you're

794

1 suggesting, and does not find Ameritech Illinois

2 responsive to its business needs with respect to the

3 Pronto network, what options do you think Rhythms has

4 to require Ameritech Illinois to meet those business

5 needs, if any?

6 A. Well, as far as if we are not meeting the

7 commitments that we have made --

8 Q. No, that's not what I said, Ms. Chapman.

9 I said business needs.

10 A. Well, but that's part of what I'm saying.

11 That's part of the answer.

12 Q. That wasn't my question. The question

13 was on business needs.

14 A. Well, if you'd let me finish the answer,

15 you'd see it is part of the question.

16 Q. Go ahead.

17 A. As part of the commitments we've made,

18 they added those to the Pronto order, and those are

19 enforceable under a merger condition, so if we are

20 not meeting our obligation to provide the full

21 functions and capabilities of the loop as we can

22 through collaboration, then it isn't enforceable or



1 the merger conditions are enforceable, but I don't  
2 know exactly how -- the procedures of how that would  
3 be done. I'm not familiar with how that would be  
4 enforced.

5 Q. I'm still waiting for the answer to my  
6 question though.

7 A. Well, that is the answer to your  
8 question. It's enforceable under the merger  
9 conditions.

10 Q. All right. Let me ask my question again.  
11 Maybe you didn't hear it correctly. I want you to  
12 assume that we sit down and talk and we tell you what  
13 our business needs are.

14 A. Uh-huh.

15 Q. And you don't agree to meet those  
16 business needs. Irrespective of the merger condition  
17 -- I'm sorry -- the waiver order or anything else  
18 that you have as a binding obligation from the FCC,  
19 I'm asking you to assume that you don't meet our  
20 business needs with respect to our use of the Pronto  
21 network. I want you to tell me do we have any way to  
22 make you offer what we need on the Pronto

795

1 before you filed your testimony in this case?

2 A. I considered the state requirements that  
3 I knew to be relevant. If there was something that I  
4 did not consider, I obviously don't know I didn't  
5 consider it.

6 Q. Okay. Which ones did you consider?

7 A. I considered the -- actually in Illinois  
8 I don't believe I did consider anything specific to  
9 Illinois as far as this issue.

10 Q. Let me take you back to your contract  
11 attached to your testimony.

12 A. All right.

13 Q. I may have found the answer to the  
14 question I asked you before.

15 A. Okay.

16 Q. Let's look at Section 21, the Reservation  
17 of Rights section on page -- it starts on page 22 and  
18 ends on page 23. Do you have that?

19 A. Yes, I do.

20 Q. Okay. Turn to page 23 with me, please.

21 A. Uh-huh.

22 Q. If you want to, you can scan that whole

797

1 architecture?

2 MR. BINNIG: I'm going to object to the  
3 relevance of the question at this point.

4 EXAMINER WOODS: Overruled.

5 A. Well, again, the way you would do it  
6 would be through that, so I don't know how I can  
7 separate it. I mean yes, you could do that because  
8 part of what we're obligated to do is make the full  
9 functions and capabilities of the architecture  
10 available, so if we weren't doing that, then you  
11 would have a means to pursue that if we weren't  
12 meeting that obligation. I don't know -- separate  
13 from that, no, you wouldn't.

14 Q. If I asked you the same questions about  
15 whether or not the Illinois Public Utility Act might  
16 have requirements that might apply to you in terms of  
17 services versus UNEs, what would your answer be? Do  
18 you know anything about the Illinois Act?

19 A. I'm not familiar enough with any act in  
20 Illinois -- any specific act in Illinois regarding  
21 that to make a comment.

22 Q. Did you consider any state requirements

796

1 section, but isn't it correct that this section  
2 actually explicitly grants SBC the unilateral right  
3 to withdraw the service, even after the contract has  
4 been signed?

5 MR. BINNIG: Do you have a particular cite,  
6 Steve?

7 MR. BOWEN: Yeah. Section 21, the second sub  
8 1.

9 A. Yes. As a result of regulatory  
10 developments that would change the environment in  
11 which -- under which the contract was offered, then  
12 yes, under those circumstances, but not apart from  
13 that, the way I'm reading this here. It says as a  
14 result of regulatory developments, so it's limited to  
15 that. So if there were no regulatory developments  
16 that impacted it, then no, we could not, I don't  
17 believe, withdraw it under that paragraph.

18 Q. Do you think that's a pretty clear  
19 definition in that section of regulatory  
20 developments? It's a defined term, meaning initial  
21 capital letters in the contract?

22 A. I will have to check.

798

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1 Q. I mean it's defined right there in that  
2 subsection, top of page 23. It's Section 22 -- I'm  
3 sorry -- Section 21.1, but it's the second .1, so.  
4 They're all .1. It's a draft.

5 A. Again, what was the question?

6 Q. Do you see the definition of regulatory  
7 developments in that subsection?

8 A. It said that they would include, but  
9 would not be limited to action or inaction on the  
10 ownership issues pending before the FCC or SBC  
11 besides that the assets in question will be owned by  
12 an entity other than SBC ILECs.

13 Q. Okay. That's not a clear definition of  
14 that term, is it? It says includes that, but not  
15 limited to that. That's one example of an option,  
16 right?

17 A. And, again, if the CLEC would want to --

18 Q. Is that right? Is my question right? Is  
19 that only one example of the possible options?

20 A. That is an example, yes.

21 Q. Okay, and is there any further definition  
22 at all on what the term regulatory developments might

800

1 be construed to mean, which would then trigger your  
2 right to terminate this contract?

3 A. And again, not being a lawyer, I am not  
4 certain I can answer that.

5 Q. You don't see anything there, do you?

6 A. I don't see any further definition of  
7 what a regulatory development is.

8 Q. Okay. And isn't it true that the last  
9 sentence simply provides that if you do terminate the  
10 service, withdraw it, you have no further obligation  
11 to provide the service?

12 A. That is true.

13 Q. Okay. Let's go back to your testimony at  
14 page 36, please, and look with me at lines 8 through  
15 15, please.

16 A. Yes. Okay.

17 Q. I'm getting the sense that what you're  
18 saying here is that Project Pronto, as you are  
19 offering it as a Broadband Service offering, is an  
20 additional new, good thing for CLECs without taking  
21 anything currently away. Is that correct?

22 A. Yes, that's exactly correct.

801

1 Q. And here you say that, and I'm quoting  
2 you here, "Project Pronto, and Ameritech Illinois'  
3 Broadband Service offering, creates new business  
4 opportunities for CLECs." Right?

5 A. Yes.

6 Q. Would you agree that if Project Pronto  
7 becomes available pursuant to ICC order or SBC's  
8 voluntary offering as a UNE, that that also would  
9 create new business opportunities for CLECs?

10 A. In all honesty, I don't know that. It  
11 would depend on how it was offered and whether or not  
12 that would be a beneficial way to offer it. I really  
13 can't say without knowing what the result of the  
14 order would be and how it would look.

15 Q. Okay. Look down the page with me now,  
16 please, to the question that begins on line 16.

17 A. Uh-huh.

18 Q. Now here you're starting into a  
19 discussion about all the bad things that might happen  
20 if you have to offer it as a UNE. Right?

21 A. Well, not just if we have to offer it as  
22 a UNE, but depending on what types of regulatory

802

1 requirements were added to the offering, it might  
2 make it impractical to offer it or to build  
3 additional network for this offering, so that's  
4 really what this is addressing, so it's not  
5 necessarily specifically as a UNE.

6 Q. Okay. Fair enough.

7 I want you to focus with me on lines 18  
8 through 20.

9 A. Okay.

10 Q. And I'm going to read it for the record  
11 so that the transcript will be clear in terms of the  
12 context. You say, "Any regulatory burden placed upon  
13 Ameritech Illinois' Broadband Service offering has  
14 the potential to slow or potentially stop the  
15 roll-out of Project Pronto and the Broadband Service  
16 offering." Do you see that?

17 A. Yes, I do.

18 Q. I want you to be very precise now with  
19 me.

20 A. Uh-huh.

21 Q. This is a pretty serious matter. I mean  
22 stopping Project Pronto is pretty serious, right?

803

1 A. Yes, it is. We hope we don't have to do  
2 that.

3 Q. I want you to tell me precisely under  
4 what conditions or what regulatory burdens you would  
5 stop the roll-out of Pronto in Illinois.

6 A. I cannot tell you precisely. It would  
7 depend -- we would have to make an evaluation once  
8 that regulation came out and evaluate to determine  
9 whether or not under the current -- under the new  
10 rules of the state whether or not it is practical for  
11 us to continue making this type of network  
12 investment, so I really can't tell you precisely.  
13 It's going to have to be something that will be  
14 evaluated in a lot of detail before we can make a  
15 decision.

16 Q. Well, you understand that Rhythms is  
17 asking this Commission to require you to offer Pronto  
18 as UNEs, don't you?

19 A. Yes.

20 Q. Okay. In deciding -- and you, of course,  
21 are saying don't do that. Right?

22 A. Yes.

804

1 Q. All right. The Commission has to decide  
2 this. The judge has to decide that issue and  
3 recommend to the Commission what they should do.  
4 Right?

5 A. Yes.

6 Q. And if he's looking at an issue that  
7 says, well, if I go Rhythms' way, Ameritech might  
8 stop rolling out Pronto altogether, that's what  
9 you're saying, right?

10 A. It's possible, depending on how -- like I  
11 said, depending on how that requirement would play  
12 out in real life, yes.

13 Q. Well, that's kind of like -- there's a  
14 lot of weight riding then on what's going to happen  
15 here in this decision. Right?

16 A. Yes.

17 Q. So don't you think you have an obligation  
18 to tell the judge precisely what conditions would  
19 cause you to stop that investment in Illinois so he  
20 can make a good decision that's informed?

21 A. Well, we don't necessarily know that  
22 until we see exactly how it's worded. We're going to

805

1 have to do a detailed evaluation. We can't evaluate  
2 every single possibility of what he might decide to  
3 do. I mean there's a huge number of possibilities of  
4 how awards come out. They can have all these very  
5 different terms. We could not possibly account for  
6 all the various, different ways something could come  
7 out and say, okay, in this scenario if you do this,  
8 this, this, this, this, and that, then we can't do  
9 it. If you do this, this, this, this, and this, we  
10 can under -- it would be like this. There's just no  
11 way to really do that.

12 Q. Okay. Well, I'm giving you a chance here  
13 because all I hear right now is vague threats. I'm  
14 giving you a chance right now to tell the judge  
15 precisely under what conditions you would take your  
16 ball and go home and stop investing in Pronto. Can  
17 you do that?

18 MR. BINNIG: I'm going to object to the  
19 characterization. I'm also going to object to being  
20 asked and answered.

21 EXAMINER WOODS: I think it was asked and  
22 answered. I think if you want to --

806

1 MS. BOWEN: I'll rephrase this.

2 EXAMINER WOODS: I would hate to start doing  
3 this and giving particular examples such as asking  
4 her if all of the exact relief granted in Pronto's  
5 request were granted, would that be enough.

6 MR. BOWEN: Okay.

7 Q. You understand Rhythms' proposal for  
8 unbundling in this case, do you not?

9 A. I understand parts of it. Again, without  
10 -- I don't have the network background to understand  
11 all the implications of everything that's proposed by  
12 Rhythms.

13 Q. All right.

14 A. Which Mr. Lube would have had.

15 Q. Let me try and give you I hope a pretty  
16 high level and simple set of assumptions you can  
17 react to. Okay?

18 A. I will try.

19 Q. Let's assume that Rhythms is asking this  
20 Commission -- and this all applies to Pronto  
21 architecture -- is asking this Commission to require  
22 you to offer a subloop from the customer premises to

807

1 the Pronto remote terminal and a second subloop from  
 2 the Pronto remote terminal to a central office hand-  
 3 off at a device you call an OCD, the rest of the  
 4 world calls an ATM switch, and the right to have  
 5 either Ameritech or Rhythms plug in an AFLU card in  
 6 the RT.

7 MR. BINNIG: And you have no specific prices in  
 8 this?

9 MR. BOWEN: She hasn't qualified her answer  
 10 with respect to pricing.

11 MR. BINNIG: I'm just asking, your question.

12 MR. BOWEN: No, my question doesn't assume any  
 13 prices at all right now, Mr. Binnig.

14 MR. BINNIG: Okay. That's fine.

15 Q. If the Commission does that, will you  
 16 shut down deployment of Pronto Illinois?

17 A. What I can say is that we will be most  
 18 likely to either stop, halt, slow down the deployment  
 19 of Pronto if the line card ownership issue is not  
 20 resolved in the way that we have suggested where we  
 21 own the cards. Now as far as any other -- all the  
 22 different possible variations, I really can't tell

808

1 you whether or not those in any combination would be  
 2 enough to halt it or slow it down or, in the  
 3 alternative, even if we did roll it out, halt perhaps  
 4 future similar type investments. I really can't say  
 5 that. That's going to be a decision made at a very  
 6 high level, but I can say that the line card  
 7 ownership is probably one of the key issues regarding  
 8 the practicality of this offering and whether or not  
 9 we can practically offer it.

10 Q. So this is just a vague threat, isn't it?

11 A. No, it's not a vague threat. It's just  
 12 that it's a very complex issue, and I am not a  
 13 network person who would be able to evaluate on the  
 14 various different things the possible impacts, so I'm  
 15 not at liberty -- I'm not prepared with that type of  
 16 detailed answer. I'm just saying that dependent on  
 17 the results, it's going to have to be evaluated  
 18 depending on some -- and we'll have to look at is it  
 19 still practical. It's something we want to provide.  
 20 It's something we want to invest in. It's practical  
 21 the way we are currently proposing to provide it, and  
 22 it's a good thing, and whether or not it would still

809

1 be practical under altered terms we would have to  
 2 look at. That's what I can say.

3 Q. Okay. You're aware, are you not, that  
 4 the Commission has already ordered that scenario in  
 5 the Rhythms/Ameritech Illinois arbitration?

6 A. I am aware that -- my understanding is  
 7 that we have to provide it as we provide it to our  
 8 affiliate is I believe what it says, but I would have  
 9 to look at that again. I am aware there is a ruling  
 10 already in place, yes.

11 Q. Have you heard one of my mom's favorite  
 12 terms, cut off your nose to spite your face,  
 13 Ms. Chapman?

14 A. Yes, I have.

15 Q. Okay. Isn't Pronto being rolled out  
 16 primarily to serve SBC's own business objectives,  
 17 either directly or through its separate subsidiary --  
 18 I'm sorry -- either directly through Ameritech  
 19 Illinois or through its separate sub, Advanced Data  
 20 Services?

21 A. Well, this is an SBC investment of SBC's  
 22 money, so I guess, yes, you would say that its goal

810

1 is SBC's goals.

2 Q. Okay. Well, if the Commission accepts  
 3 Rhythms' recommendation in this case and orders  
 4 subloops and orders the line card ownership we've  
 5 been talking about, if you shut down Pronto, SBC  
 6 couldn't meet its business objectives, could it?

7 A. That is a possibility, yes.

8 Q. And would you call that cutting off your  
 9 nose to spite your face?

10 A. Well, sometimes you have to take the  
 11 lesser of two evils. If it's going to cost us a  
 12 fortune to meet our business objectives, then we  
 13 can't necessarily meet our business objectives,  
 14 unfortunately. We would like to be able to,  
 15 obviously, and we would hope to be able to do so in a  
 16 way that allows the CLECs to also benefit and meet  
 17 similar objectives.

18 Q. Okay. Well, I know you've seen this  
 19 investor briefing before, right? It's been in  
 20 testimony in three cases you've been involved in I  
 21 believe, or at least two, attached to Ms. Murray's  
 22 testimony or Mr. Riolo's testimony.

811

1 A. I believe I have.

2 Q. Okay. In this case it's -- this time

3 it's marked as Rhythms Exhibit 1.2. Do you recall

4 that?

5 A. No, I don't recall specific exhibit

6 numbers.

7 Q. Okay. I'll represent to you that that's

8 true. Okay?

9 A. Okay.

10 Q. This was an investor briefing dated

11 October 18, 1999, right?

12 A. I'll take your word for it.

13 Q. Okay. And this is a briefing, on its

14 face, to current and potential investors in your

15 parent corporation. Isn't that right?

16 A. I assume so. Again, I don't have a copy

17 in front of me, but.

18 Q. And is it your understanding that when a

19 corporation like SBC speaks about its business plans

20 to investors, it's required by SEC disclosure

21 requirements to be accurate and truthful?

22 A. I really don't know what the requirements

812

1 are. I believe it's probably true.

2 Q. Okay. Well, in the investor briefing on

3 page 2, I'm going to read you a sentence. I'm

4 quoting here what your corporation told the

5 investment community and the world at large. "The

6 network efficiency improvements alone will pay for

7 this initiative, leaving SBC with a data network that

8 will be second to none in its ability to satisfy the

9 exploding demand for Broadband Services."

10 A. Uh-huh.

11 Q. What does that mean, that the network

12 efficiency improvements alone will pay for this

13 initiative to you?

14 A. I don't know the full meaning of it. I

15 believe that it's saying that the efficiencies that

16 we will gain will pay for the service, but that,

17 again, is how we're currently offering it they will

18 do it. If it's no longer efficient, that will no

19 longer be true.

20 Q. Okay. And you're investing, not you, but

21 the company is investing \$6 billion in 13 states.

22 Right?

813

1 A. Yes.

2 Q. Well, I didn't see -- I didn't see --

3 strike that.

4 Now you're familiar with the waiver

5 request of the FCC, right?

6 A. Yes.

7 Q. Is it correct that that came in, first of

8 all, via a letter to Larry Strickling, who was the

9 Chief of the Common Carrier Bureau in February of

10 this year?

11 A. That's probably -- I really don't know

12 exactly what the chain of events was, but that's

13 probably true.

14 Q. Okay. And didn't that letter and later

15 submissions by SBC say to the FCC that if the FCC

16 didn't approve the waiver request that SBC has made,

17 that SBC might not deploy Project Pronto?

18 A. I believe that's probably true too, yes.

19 Q. Okay. Did SBC tell its investors three

20 months before that that the \$6 billion investment was

21 conditional on the FCC's approval of a waiver request

22 in your merger conditions?

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1 A. I don't believe we knew back then that it

2 was going to be. I don't even know if during that

3 briefing if the merger conditions were completed. I

4 don't know the timing, but I don't know that we had

5 realized that the waiver would be necessary at that

6 time.

7 Q. SBC didn't know it would need a waiver in

8 October of '99 to own the line cards in the OCD? Is

9 that your testimony?

10 A. I don't know. I'm saying that when that

11 statement was made, I don't know if we had realized

12 at the time that a waiver would be necessary. That's

13 -- I didn't make -- I did not write that draft; I

14 mean that briefing. I don't know what we knew at the

15 time it was written. I'm sorry. And whether that

16 was considered.

17 MR. BOWEN: Can I request counsel to borrow his

18 merger order for a moment, merger conditions order,

19 if you have that with you?

20 MR. BINNIG: I don't have it with me, never

21 have.

22 MR. BOWEN: You never have. Okay. Well, I

815

1 guess I've got it.

2 Q. I have the order, Ms. Chapman.

3 A. Okay.

4 Q. It says adopted October 6, '99 and

5 released October 8, '99.

6 A. Okay.

7 Q. Isn't this order the result of a long

8 series of negotiations between SBC and the Common

9 Carrier Bureau at the FCC?

10 A. I believe so, yes.

11 Q. So as of October 8th, when this order

12 came out, SBC knew what the merger conditions were.

13 Right?

14 A. Yes, and whether or not whoever wrote the

15 investor briefing knew all the implications of that

16 on that particular issue I can't say at that time. I

17 mean it's a pretty lengthy order, and I know changes

18 were made. You know, there were changes up to the

19 end I believe.

20 Q. SBC knows what advanced services are,

21 doesn't it?

22 A. Yes, and I mean I wasn't involved in any

816

1 of this so I can't say what anyone knew regarding

2 either the merger order or the implication of the

3 merger order on that investor briefing, so I'm sorry.

4 Q. Well, there's no footnote in here saying,

5 in little tiny print, you know, pending approval --

6 MR. BINNIG: Your Honor, just to move this

7 along, we'll stipulate the press release says what it

8 says.

9 MR. BOWEN: I want to know what it doesn't say.

10 EXAMINER WOODS: Mr. Bowen, I'm a little

11 confused -- (interrupted).

12 MR. BINNIG: It's obviously the same thing.

13 EXAMINER WOODS: I'm a little confused what

14 that goes to, frankly. I mean we can agree that it's

15 not conditional in the investor briefing, but in one

16 of your favorite expressions, so what?

17 (Laughter)

18 MR. BOWEN: So what? I'm glad you asked that,

19 Your Honor. The so what is that I'm proving in that

20 the company has repeatedly made threats to take its

21 ball and go home.

22 EXAMINER WOODS: I think we know that.

817

1 MR. BOWEN: If it doesn't get what it wants.

2 EXAMINER WOODS: We know that.

3 MR. BOWEN: Okay.

4 MS. HIGHTMAN: Can we all stipulate to that?

5 MR. BOWEN:

6 Q. In fact, in this case, Ms. Chapman, you

7 know that Mr. Lube is saying the same thing; that if

8 the line card ownership issue doesn't come out the

9 right way from your perspective, that you can stop

10 Project Pronto in Illinois?

11 A. I would imagine he would say that.

12 Q. You don't know that he said that?

13 A. I wasn't here when he was here the first

14 day, so.

15 Q. It's in his direct testimony -- rebuttal

16 at page 28.

17 MR. BINNIG: Do you want to give her a copy and

18 she can read it into the record?

19 MR. BOWEN: No.

20 Q. Did you read his testimony?

21 A. I've read his testimony in many states,

22 so off the top of my head I don't know specifically

818

1 what he said in this particular case.

2 Q. Okay.

3 A. But it would be consistent for him to

4 have said that.

5 Q. Okay.

6 Well, let's look at page 38 now. Here's a

7 good question you were asked: "Should Ameritech

8 Illinois' Broadband Service be treated as a UNE?" Do

9 you see that?

10 A. Yes, I do.

11 Q. And you say no, and then you say, and I

12 am quoting you here, "Obviously, the creation of a

13 new class of UNEs discourages innovation and

14 investment and will not result in reduced

15 regulation." Do you see that?

16 A. Yes.

17 Q. What is obvious about that?

18 A. I think that it's pretty obvious that if

19 investing in innovating results in additional

20 obligations that may be burdensome, then you're going

21 to think twice before you decide to invest or

22 innovate because you may worry that if you do that,

819

1 you may end up harming yourself rather than bringing  
2 benefits to your company and to your shareholders, so  
3 that's something that we have to consider.

4 Q. Who do you think SBC sees as its  
5 Broadband Service competitors?

6 A. Our Broadband Service competitors?

7 Q. Right.

8 A. I think in the bigger sense it's probably  
9 the cable modem providers. Obviously, the various  
10 data providers who would use the Broadband Service  
11 are -- they're our customers, but they're competitors  
12 with our affiliates, but I believe we believe that it  
13 is important to promote the DSL-based technologies  
14 because they use our network as opposed to another  
15 network.

16 Q. Like say AT&T's network?

17 A. Oh, like say, for instance, that one,  
18 yes.

19 Q. And what about broadband data via  
20 satellite, like the Hughes satellite dish? Do you  
21 view that as competition?

22 A. Yes. Any type of broadband service that

820

1 is not provided over our network would be a  
2 competitive service, yes.

3 Q. And what about point-to-point microwave?

4 A. If that's another -- (interrupted).

5 Q. Winstar, for example, is that a  
6 competitor to your Broadband Service?

7 A. I believe so. I'm not familiar with all  
8 the various -- they're coming up and coming pretty  
9 quick, all the different variations on broadband,  
10 but.

11 Q. Don't you think you need to be able to  
12 respond to wireless, broadband, and landline cable-  
13 based Broadband Service competition?

14 A. On the wholesale side -- I mean --

15 Q. No, as a company, as SBC, don't you think  
16 SBC wants to respond to cable modems, for example?

17 A. I think so, but I can't speak for the  
18 corporate. I speak for wholesale marketing, so.

19 Q. I understand that.

20 A. Yes.

21 Q. And isn't Project Pronto your competitive  
22 response to your broadband competitors using other

821

1 technologies?

2 A. I'm sure that's part of it, yes.

3 Q. Okay. Well, if you stop Pronto  
4 deployment in Illinois, then you won't be able to  
5 compete on a broadband basis with the wireless  
6 companies and the cable modems and the other  
7 competitors, will you?

8 A. Not on the scale that we had wanted to.  
9 That's right, but if it's going to -- again, if it's  
10 going to cost us more money than we can earn, then it  
11 doesn't do us any good. We want to be in this  
12 business. We want to provide this service. That's  
13 why we want to invest this money, but, you know,  
14 we're still a business. You know, the reason we want  
15 to invest it is so that we can, you know, so that we  
16 can provide services so we can succeed as a business,  
17 just as all the CLECs want to do.

18 Q. Okay. I understand money is important.  
19 If I tell you that Rhythms is happy to pay  
20 TELRIC-based prices for what it wants, does that  
21 satisfy that concern?

22 A. No, it doesn't. It's not just about the

822

1 rates. It's about how we have to provide it and the  
2 architecture that we have to build and that sort of  
3 thing, whether it's manageable. There's a lot of  
4 issues.

5 Q. Okay. Then you have a notion that starts  
6 I think around page 39 about this notion of stability  
7 and certainty of the list of UNEs. Do you see that?

8 A. Yes.

9 Q. Do I take from this testimony here that  
10 you are asserting that the FCC's UNE Remand Order was  
11 the final treatment of UNE issues because you're  
12 quoting it here?

13 A. No, I'm not saying that it was the final  
14 treatment but that the FCC stated that they wanted to  
15 create some stability by providing a list so that  
16 there would be some certainty in the market.  
17 Obviously, if one day we are obligated to provide one  
18 thing and the next day we're obligated to provide  
19 something else, it makes it very difficult for us to  
20 make wise business decisions.

21 Q. Okay. Well, if that were the final word  
22 on UNEs, there would be no point to the FCC's

823

1 currently pending MPRM, would there, the one you and  
 2 we just filed comments in last Friday?

3 MR. BINNIG: Well, I guess I'm going to object  
 4 to the relevance of this question. She said she  
 5 didn't regard it as the final word on UNEs.

6 MR. BOWEN: I'll withdraw and reask, Your  
 7 Honor.

8 Q. Isn't it correct that the FCC is, in  
 9 fact, consideration creation of additional UNEs in  
 10 the currently pending MPRM, Ms. Chapman?

11 A. I believe that is one of the goals of  
 12 that, is that they are considering whether or not  
 13 additional UNEs are necessary, yes.

14 Q. Didn't your company just file comments  
 15 last Friday on those issues?

16 A. I believe that was the date, yes.

17 EXAMINER WOODS: Are you familiar with the  
 18 comments?

19 A. I'm somewhat familiar with the comments.

20 EXAMINER WOODS: Did it request creation of any  
 21 additional UNEs?

22 A. Our comments do not, no. I do not

824

1 believe so.

2 Q. Okay. Let's turn to a different topic  
 3 here now. Could you pick up the contract, again,  
 4 that's attached to your testimony? Turn back to the  
 5 page 39 price list. Do you have that?

6 A. I'm getting there.

7 Q. Okay.

8 A. Yes, I'm there.

9 Q. Okay. The first question, in response to  
 10 Sprint's counsel you said that he would need to buy a  
 11 DLE-ADSL PVC, which you said was a private virtual  
 12 circuit. What's a private virtual circuit?

13 A. Again, I don't know that I could describe  
 14 a private virtual circuit correctly. I'm sorry.

15 Q. This is your product, right?

16 A. This is my product, but I do not have the  
 17 network background to really be able to describe a  
 18 private virtual circuit. I'm sorry.

19 Q. Okay. I didn't understand your answer --  
 20 I saw on the page here, if you look with me under  
 21 Illinois.

22 A. Uh-huh.

825

1 Q. Under the Nonrecurring First column.

2 A. Uh-huh.

3 Q. I see N/A next to the line shared DLE-DSL  
 4 HFPSL. Do you see that?

5 A. Uh-huh.

6 Q. And again next to the DLE-ADSL PVC. Do  
 7 you see that?

8 A. Yes.

9 Q. The last MFT. What's N/A mean? Why is  
 10 there no price in there?

11 A. I believe on the nonrecurring there would  
 12 not be a nonrecurring because it would be a working  
 13 circuit for that piece.

14 Q. If I want to order -- if Rhythms says  
 15 okay, I give up, I'll take your wholesale Broadband  
 16 Service, and we order one, what's the nonrecurring  
 17 charge that's going to apply to that? It just says  
 18 N/A on here. Does that mean it's a zero nonrecurring  
 19 charge?

20 A. Again, subject to check, I believe it  
 21 does in that case, but I would have to -- I would  
 22 have to double-check on that. I'm sorry.

826

1 Q. Well, why are you charging Covad \$10 and  
 2 you're going to give it to us for zero?

3 A. This isn't the same product as what the  
 4 \$10 -- the \$10 is line sharing, not the Broadband  
 5 Service.

6 Q. Ah.

7 A. From what I understand. This is a  
 8 totally different offering.

9 Q. So the \$10 is for all copper.

10 A. I believe so. Again, I haven't seen the  
 11 contract. I can't say for sure, but that's my  
 12 understanding is that it's for line sharing.

13 Q. You'll get a chance to see the contract.

14 A. I know eventually I will.

15 Q. All right. So is it your testimony that  
 16 the contract that you're proposing to control this  
 17 relationship, that is Rhythms buying up Broadband  
 18 Service offering, will have a zero nonrecurring  
 19 charge?

20 A. Again, subject to check. I would have to  
 21 double-check that on the prices.

22 Q. Well, could you do that, please? That's



827

1 important to us. I want to make sure I understand  
2 what you're proposing, so could I ask that we assign  
3 a number to that, Your Honor?

4 MR. BINNIG: An on-the-record data request?

5 EXAMINER WOODS: Yes.

6 A. No problem.

7 EXAMINER WOODS: I think it's important too.

8 A. I would just wonder do we have to read  
9 through this right now to make sure I understood what  
10 we need?

11 Q. I don't want to take the time to do that.

12 A. Or we don't want to do that. I'm sure.

13 Q. You've got to make an airplane. I know.

14 MR. BINNIG: Yes.

15 Q. I do see nonrecurring charges next to the  
16 OCD port terminations and OCD cross-connect to  
17 collocation entries. Is that correct?

18 A. That is correct.

19 Q. Okay. And I also see NAs next to  
20 DLE-Combined Voice & Data Loop and DLE-COT Voice  
21 Cross-Connect. Do you see that?

22 A. Yes, and I believe, as I said earlier, on

828

1 those NAs -- that's why I would need to check to see  
2 exactly why it's listed as N/A in all those cases.  
3 It's a little confusing to me. I believe in those  
4 cases it's because we do not have a price developed  
5 yet because that's an offering that is still in  
6 development.

7 Q. Okay.

8 A. Those should probably be TBDs, to be  
9 determined, but.

10 Q. I'd like you to check so I understand  
11 what you're proposing here.

12 A. Yes.

13 Q. All those NAs in that column under  
14 Illinois Nonrecurring First and Additional.

15 A. Yes, I understand. It does need to be  
16 clarified.

17 Q. All right. Thank you.

18 A. I agree.

19 Q. Okay. Now, counsel for Sprint asked you  
20 questions about the Covad arrangement, and you said  
21 it was 13-state only. Did I hear you correctly?

22 A. That it was 13 state?

829

1 Q. You had to take it on the 13-state basis  
2 if you wanted to opt into that?

3 A. Yes.

4 Q. Okay. I want to represent to you that  
5 that your company has told my client that Rhythms can  
6 opt in on a state-at-a-time basis to that agreement.  
7 I'm just representing that to you. Are you certain  
8 that your company's position is that it's a 13-state  
9 take-it-or-leave-it kind of agreement?

10 MR. BINNIG: Well, I'm going to object to the  
11 form of the question. It's assuming facts not in  
12 evidence.

13 EXAMINER WOODS: Is this on the basis of a  
14 hypothetical or is this --

15 MR. BOWEN: Well, I don't want to testify, Your  
16 Honor.

17 MR. BINNIG: You can't.

18 MR. BOWEN: But we have information that's  
19 contrary to what the witness testified to under oath.  
20 I think the safest way to do this is for me to  
21 represent what I said and ask her to check off the  
22 record when she can check that and see if, in fact,

830

1 it is 13 states as a package only or if, in fact, the  
2 company is willing to offer that on a state-at-a-time  
3 basis.

4 MR. BINNIG: Well, why don't we do this, Your  
5 Honor. I mean we know what the question is, and we  
6 can also treat that as an on-the-record data request.

7 MR. BOWEN: That's fine.

8 EXAMINER WOODS: Please.

9 MR. BINNIG: And provide responses to whether  
10 it's 13-states only or it can be obtained on a  
11 state-at-a-time basis.

12 MR. BOWEN: That's fine. Sure.

13 Q. Okay. Now you also testified in response  
14 to counsel from Sprint's question about whether or  
15 not the \$10 nonrecurring charge for line sharing was  
16 the only nonrecurring charge or not. Do you recall  
17 that?

18 A. Yes.

19 Q. And I think I heard you say that you  
20 thought there might be other nonrecurring charges in  
21 other parts of some agreement that might apply. Did  
22 I hear that right?

<p>1 A. Well, he was specifically talking --</p> <p>2 mentioned the service order charge.</p> <p>3 Q. Right.</p> <p>4 A. Which is part of the underlying</p> <p>5 agreement. It's not specific to any single product,</p> <p>6 so I don't -- that would not, I don't believe, have</p> <p>7 been included in the agreement with Covad in their</p> <p>8 DSL HFPL appendix.</p> <p>9 MR. BOWEN: Okay. Your Honor, we have, as you</p> <p>10 know, obtained a copy of the current draft of an</p> <p>11 agreement that covers this issue. This has been</p> <p>12 provided pursuant to protective order. I'm going to</p> <p>13 ask that -- no?</p> <p>14 EXAMINER WOODS: Confidentiality.</p> <p>15 MR. BOWEN: Proprietary agreement?</p> <p>16 (Whereupon at this point in the</p> <p>17 proceedings an off-the-record</p> <p>18 discussion between counsel for</p> <p>19 Rhythms transpired.)</p> <p>20 MR. BOWEN: It has been provided under</p> <p>21 restrictions.</p> <p>22 I want to mark this as an exhibit and show</p>	<p>831</p> <p>1 agreement between Covad and SBC concerning the</p> <p>2 provisioning of DSL services between SBC and Covad.</p> <p>3 MR. BINNIG: Line sharing.</p> <p>4 EXAMINER WOODS: I'm sorry; line sharing</p> <p>5 between SBC and Covad. Mr. Bowen has asked that the</p> <p>6 Interim Agreement, which he has a copy of that was</p> <p>7 provided through discovery, be introduced into the</p> <p>8 record. I have indicated to him that if that were</p> <p>9 objected to, I would sustain the objection because</p> <p>10 the agreement is not yet final. He has graciously</p> <p>11 acceded to withhold moving that document pending the</p> <p>12 receipt of the final agreement, the indication being</p> <p>13 that he intends to argue that the prices contained in</p> <p>14 the press release that were previously admitted are</p> <p>15 somewhat sketchy compared to the materials that are</p> <p>16 contained in the actual agreement.</p> <p>17 He wants to argue in his brief that there</p> <p>18 are charges that are not reflected in the -- I assume</p> <p>19 charges not reflected in the press release that are,</p> <p>20 in fact, reflected in the contract. Because we've</p> <p>21 previously agreed to get SBC to provide us with</p> <p>22 further detail on the manner in which the wholesale</p>
<p>832</p> <p>1 the witness a portion of it and ask her a question,</p> <p>2 but I don't want to ask her to read onto the open</p> <p>3 record any portion of it.</p> <p>4 EXAMINER WOODS: Okay.</p> <p>5 THE WITNESS: Am I allowed to see it without</p> <p>6 signing anything?</p> <p>7 MR. BOWEN: You'll see it in a second.</p> <p>8 MR. BINNIG: We may have it.</p> <p>9 MS. HIGHTMAN: You gave it to us.</p> <p>10 MR. BINNIG: Yes, yes.</p> <p>11 EXAMINER WOODS: Let's go off the record before</p> <p>12 we kill the Court Reporter by everybody talking at</p> <p>13 once.</p> <p>14 (Whereupon at this point in the</p> <p>15 proceedings an off-the-record</p> <p>16 discussion transpired.)</p> <p>17 EXAMINER WOODS: Let's go back on record.</p> <p>18 We have had a discussion concerning the</p> <p>19 manner in which we're going to proceed.</p> <p>20 Mr. Binnig has agreed to provide to the</p> <p>21 parties in this case and as a late-filed exhibit to</p> <p>22 be admitted into the record in this case the final</p>	<p>834</p> <p>1 offering is going to be priced out, all that</p> <p>2 information should be available by brief time, and I</p> <p>3 think that any possible prejudice will be ameliorated</p> <p>4 by receipt of those materials.</p> <p>5 MR. BOWEN: Okay.</p> <p>6 EXAMINER WOODS: Ms. Franco-Feinberg.</p> <p>7 MS. FRANCO-FEINBERG: Your Honor, Felicia</p> <p>8 Franco-Feinberg on behalf of Covad Communications</p> <p>9 Company.</p> <p>10 I just would like to clarify a statement.</p> <p>11 The attachment that Mr. Bowen has referenced is not,</p> <p>12 in fact, an interim agreement. There is no binding</p> <p>13 agreement between our companies. That's not an</p> <p>14 executed interim amendment.</p> <p>15 EXAMINER WOODS: Okay.</p> <p>16 MS. FRANCO-FEINBERG: And I just wanted to</p> <p>17 clarify that on the record. Thank you.</p> <p>18 EXAMINER WOODS: Would you like to enter your</p> <p>19 appearance?</p> <p>20 MS. FRANCO-FEINBERG: Felicia Franco-Feinberg,</p> <p>21 on behalf of Covad Communications Company, 8700 West</p> <p>22 Bryn Mawr, Suite 800 South, Chicago, Illinois 60631.</p>

835

1 EXAMINER WOODS: Thank you.

2 MR. BOWEN: Okay.

3 Q. The final and very quick couple of

4 questions, I know you're not a costing expert,

5 Ms. Chapman, but you have made repeated references to

6 your concern about not being able to cover your

7 investment if certain things happen that aren't to

8 your liking, and counsel for Sprint did ask you a

9 couple questions on this. You've heard the term

10 TELRIC, right?

11 A. Yes, I have.

12 Q. Okay. Is it your understanding that the

13 term TELRIC includes a market-based rate of return?

14 A. No. A market-based? No.

15 Q. What kind of return do you think it does

16 include?

17 A. My understanding, again, as you said, I'm

18 not a cost person, but that TELRIC is based on our

19 costs and then allows for some profit which is

20 generally I believe determined by the state

21 commission.

22 Q. I take it that you think that would be

836

1 lower than a market-based rate of return.

2 A. I think generally, yes, it is.

3 Q. What do you think a market-based rate of

4 return is for your network, the use of your network?

5 A. It's going to vary depending on what

6 services we're selling. Some have a very high market

7 return; some don't. I don't know the numbers. I am

8 not involved on the retail side.

9 Q. If you don't think TELRIC pricing is

10 sufficient for the use of Pronto as UNEs, tell me

11 what profit margin product marketing would find

12 sufficient.

13 A. Again, we have agreed to provide TELRIC

14 rates for the Project Pronto offering, so I'm sure I

15 follow your question.

16 Q. Are you offering Pronto as UNEs?

17 A. No, we are not.

18 Q. Okay. I want you to assume that you are

19 required to offer Pronto as UNEs.

20 A. Okay.

21 Q. Okay? Tell me what market-based rate of

22 return you would think would be required to do that.

837

1 A. I can't tell you that because it's going

2 to depend on how it's offered as a UNE. I mean

3 there's different configurations, different ways that

4 it could be ordered to be reconfigured, so.

5 Q. Are you testifying that the rate of

6 return is a function of how those services configure?

7 A. I'm testifying that our costs are

8 directly related to whether or not we can efficiently

9 configure the service, so if we can't efficiently

10 configure it, then our costs are going to go up.

11 Q. Do you know what rate of return means?

12 A. Again, I'm not a cost person, so I'm just

13 saying -- all I can say is our costs will go up if we

14 can't be efficient.

15 Q. Okay.

16 A. So I would think the rates would have to

17 go up if we can't be efficient, so the rate that we

18 would be able to charge and still be able to get the

19 same type of return would vary depending on the

20 configuration that we have to provide this under.

21 Q. Okay. And as this Commission applies the

22 TELRIC principles, do you understand there to be

838

1 recovery in UNE prices of what are known as shared

2 costs?

3 A. Yes, I believe that's part of the

4 recovery, yes.

5 Q. And do you also understand this

6 Commission's application of TELRIC to include the

7 recovery of common costs?

8 A. Yeah, yes.

9 MR. BOWEN: That's all I have. Thank you, Your

10 Honor.

11 EXAMINER WOODS: Okay. Mr. Harvey?

12 MR. HARVEY: No.

13 EXAMINER WOODS: Mr. Binnig?

14 MR. BINNIG: I think a very short redirect,

15 Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BINNIG:

18 Q. The first question I have, Ms. Chapman,

19 is I believe Ms. Hamill asked you a question, a

20 hypothetical, where she asked you to assume a

21 situation where a UNE-P provider wanted to partner

22 with a data CLEC, and the data CLEC wasn't collocated

839

1 because the data CLEC wasn't using its own splitter;  
2 that is the data CLEC was previously providing  
3 service on a line-shared line with Ameritech Illinois  
4 and it was using the Ameritech Illinois splitter.  
5 Can you think of any instance where that would  
6 actually occur; that is where a data CLEC would not  
7 be collocated in an Ameritech Illinois central  
8 office?

9 A. No, because a data CLEC would have to  
10 have their DSLAM collocated in the central office  
11 where the copper terminates in order to provide DSL  
12 services.

13 Q. And that's true of any CLEC that wants to  
14 provide data services, whether it's AT&T, Rhythms,  
15 Covad, or any other CLEC, AADS? They've got to  
16 collocate a DSLAM?

17 A. Yes. In order to provide the  
18 copper-based DSL services, you have to collocate the  
19 DSLAM where the copper terminates.

20 Q. Okay. And then if you could turn to I  
21 think it's page 39 again of the Broadband Service  
22 agreement that's part of Exhibit CAC-4, and

840

1 Mr. Schiffman asked you some hypothetical questions  
2 about if Sprint wanted to provide data only services  
3 to a single customer, what would it cost. You  
4 identified that charges would include a DS3 port and  
5 a DS3 cross-connect. Do you recall that?

6 A. Yes.

7 Q. And for ADSL service am I correct that a  
8 DS3 port and a DS3 cross-connect can support  
9 approximately 500 lines?

10 A. That's my understanding, yes.

11 MR. BINNIG: That's all I have, Your Honor.

12 EXAMINER WOODS: Okay. Let's do lunch.

13 (Whereupon lunch recess was taken  
14 until 2:00 P.M.)  
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16  
17  
18  
19  
20  
21  
22